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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV94–966–3FR]

Tomatoes Grown in Florida; Reapportionment of Membership on the Florida Tomato Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule reapportions producer membership on the 12-member Florida Tomato Committee (Committee) established under the Federal marketing order regulating the handling of tomatoes grown in Florida. For the purposes of membership, the production area is divided into four geographic districts. The membership in District 1 will be reduced from three to two members and the membership in District 3 will be increased from three members to four members. This reapportionment reflects shifts in acreage within the districts and shipments from the districts in recent years, and provides for more equitable representation on the Committee. This action was unanimously recommended by the Committee, which is responsible for local administration of the marketing order.

EFFECTIVE DATE: This final rule becomes effective on March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Aleck Jonas, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; (813) 299–4770 or FAX (813) 299–5169; or Shoshana Avrishon, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–3610, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida, hereinafter referred to as the ''order''. The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act''.

The Department of Agriculture (Department) is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 handlers of Florida tomatoes subject to regulation under the marketing order and approximately 250 producers in the production area. Small agricultural service firms, including tomato handlers, are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of the tomato handlers and producers may be classified as small entities.

On September 8, 1994, the Committee met to discuss, among other issues, Committee representation among the four production area districts, and to determine whether any changes were warranted to foster more equitable representation.

Section 966.22 of the order establishes a Committee consisting of 12 producer members. Each member has an alternate. Each person selected as a Committee member and alternate is required to be a producer, or an officer or employee of a corporate producer, in the district for which selected and a resident of the production area. The four districts in the production area are defined in § 966.24.

Prior to this final rule, section 966.161 of the rules and regulations provided for representation among the four districts as follows: (a) District 1—three members and alternates; (b) District 2—two members and alternates, (c) District 3—three members and alternates, and (d) District 4—four members and alternates.

Section 966.25 provides that the Committee may recommend and the Secretary may approve, the reapportionment of members among districts within the production area. In recommending any such changes, the Committee is required to give consideration to various factors, including shifts in tomato acreage within districts during recent years, and the equitable relationship of committee membership and districts.

Prior to this final rule, District 1 had 25 percent of the Committee representatives but produced only 12 percent of the production. District 3 had 25 percent of the Committee representatives but produced 39 percent

of production on 44 percent of the harvested acres.

This final rule provides more equitable representation by transferring one member and one alternate member position from District 1 to District 3. District 1 is reduced to 2 members and alternates (17 percent representation and 12 percent of the production) while District 3 is increased to 4 members and alternates (33 percent representation and 39 percent of production). Districts 2 and 4 continue to be represented by 2 and 4 members and alternates, respectively.

To implement the recommended reapportionment for Districts 1 and 3, paragraphs (a) and (c) of § 966.161 of Subpart—Rules and Regulations (7 CFR 966.100 to 966.323) is revised accordingly.

This final rule provides for equitable and balanced representation on the Committee, and will not impose additional costs on growers and handlers.

Notice of action was published in the **Federal Register** on November 29, 1994 (59 FR 60919). The proposed rule provided a 30-day comment period which ended December 29, 1994. One comment supporting this action was received.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the committee's unanimous recommendation and other information, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.161 is amended by revising paragraphs (a) and (c) to read as follows:

§ 966.161 [Amended]

* * * * *

(a) District 1—two members and their alternates.

(b) * * *

(c) District 3—four members and their alternates.

* * * * *

Dated: January 24, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–2216 Filed 1–27–95; 8:45 am]

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7 CFR Part 979

[Docket No. FV94–979–1IFR; Amendment 1]

Melons Grown in South Texas; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amended interim final rule with request for comments.

SUMMARY: This interim final rule amends a previous interim final rule which authorized administrative expenses for the South Texas Melon Committee (Committee) under M.O. No. 979. This interim final rule increases the level of authorized expenses and establishes an assessment rate to generate funds to pay those expenses. Authorization of this increased budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective October 1, 1994, through September 30, 1995. Comments received by March 1, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas melons are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons handled during the 1994–95 fiscal period, which began October 1, 1994, and ends September 30, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 producers of South Texas melons under this